

Appl. No. 09/216,545

Amendment dated July 8, 2003

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**Remarks**

Claims 32-52 are pending in the instant application. In the Office Action mailed April 4, 2003, the Examiner rejects claims 32-52 and the Examiner objects to the specification, the drawings filed on 18 December 1998 and the proposed drawing correction filed on 18 December 2002. Based on the amendments and remarks made herein, Applicants respectfully request that the objections and rejections be withdrawn and that the application be passed to allowance.

**1. Paragraph 1 of the Office Action Mailed April 4, 2003**

In paragraph 1 of the Office Action mailed April 4, 2003, the Examiner indicates that "A request for continued examination under 37 C.F.R. 1.114, including the fee set forth in 37 C.F.R. 1.17(e), was filed in this application after final rejection." Applicants would like to clarify that the submission filed on 18 December 2002 was indeed, a Request for Continued Prosecution Application under 37 C.F.R. 1.53(d) (and not a Request for Continued Examination). Unless the Examiner instructs the Applicants otherwise, Applicants assume that the Request for Continued Prosecution Application was in appropriate form and that the status of the present application is unchanged.

**2. Paragraph 2 of the Office Action Mailed April 4, 2003**

In paragraph 2 of the Office Action mailed April 4, 2003, the Examiner indicates that the Summary of the Invention and the marked up copies of the paragraphs on pages 26 and 27 (Appendices B & C to the Preliminary Amendment submitted on December 18, 2002) were not in compliance with 37 C.F.R. §1.121. The Examiner also indicates that she has made the appropriate changes to bring them into compliance. Unless the Examiner instructs the Applicants otherwise, Applicants assume that no further action is necessary on this point.

**3. Paragraph 3 of the Office Action Mailed April 4, 2003**

In paragraph 3 of the Office Action mailed April 4, 2003, the Examiner objects to the Abstract of the disclosure as being too long (> 150 words). The Examiner also notes that "each of" should be deleted from lines 5 and 7. Applicants have amended the Abstract herein.

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#### **4. Paragraph 4 of the Office Action Mailed April 4, 2003**

In paragraph 4 of the Office Action mailed April 4, 2003, the Examiner objects to the drawings because the Examiner believes Figure 4 and the description on page 21, line 4 to page 25, last line are inconsistent. With regard to Fig. 4, the Examiner would like to know where the features represented by reference numerals "74"; "76" and "78" are (specifically, where are features "78" and "76" prior to rollers "106" and "108"?; and where are the seams "74" created?). Additionally, with regard to Figs. 1-3, the Examiner would like to know whether the features represented by reference numerals "54" and "58" are underlying structure or not. Amended Figs. 1-4 are provided in conjunction with this Amendment.

With regard to Figs. 1-3, the features represented by reference numerals "54" (leg elastic) and "58" (waist elastic) are underlying structure. Therefore, the amendments made to Figs. 1-2 are as follows: (1) With respect to Fig. 1, the solid line extending from reference numeral "54" has been changed into a dashed line; and (2) With respect to Fig. 2, the solid lines extending from reference numerals "54" and "58" have been changed into dashed lines.

With regard to Fig. 4, the feature represented by reference numeral "74" (side seam) has been added to show where it is formed by "bonder 114". The feature represented by reference numeral "76" (permanent joint) has been added to show where it is located both before and after rollers "106" and "108". Additionally, the label of the feature represented by reference numeral "76" in association with blade folder "110" has been removed. The label of the feature represented by reference numeral "78" (refastenable joint) has been repositioned to show its correct location before rollers "106" and "108".

Applicants respectfully submit that the amendments made to the figures herein are supported by the specification and drawings as filed and that no new matter is introduced.

#### **5. Paragraph 5 of the Office Action Mailed April 4, 2003**

In paragraph 5 of the Office Action mailed April 4, 2003, the Examiner objects to the Specification because of various informalities. With regard to the Examiner's comment with respect to the "Summary of the Invention" section (page 22 of the Preliminary Amendment submitted on December 18, 2002), Applicants amend the paragraph herein in accordance with the suggestions made by the Examiner. With regard to the Examiner's comment with respect to page 21, line 33 of the Specification, Applicants believe that the paragraph in the format submitted on December 18, 2002 is correct and no change has been made (Figs. 1-3 each show the article "20" as including an attachment panel "66"). Therefore, this paragraph is not amended herein.

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#### **6. Paragraph 6 of the Office Action Mailed on April 4, 2003**

In paragraph 6 of the Office Action mailed April 4, 2003, the Examiner objects to claims 32-52 because of various informalities. The informalities are as follows: (1) In claim 32, the Examiner believes the term "edge" in lines 9 and 11 should be "edges" and that the same is true for claim 40; (2) Also in claim 40, subsection e), the Examiner believes that the phrase "said front panels to said side edges" should be changed to "each front panel to said respective side edge"; and (3) In claim 49, subsection f), the Examiner believes that the phrase "front panels and back panels" should be changed to "front panel and said back panel on each side edge of each of the absorbent chassis". Applicants have canceled claim 32 herein; and Applicants have amended claims 40 and 49 herein in accordance with the Examiner's suggestions.

#### **7. Paragraph 7 of the Office Action Mailed on April 4, 2003**

In paragraph 7 of the Office Action mailed April 4, 2003, the Examiner rejects claims 35, 42 and 49-52 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that the Applicants regard as the invention. More specifically, the Examiner believes claims 35, 42 and 51 are indefinite because the current wording of the claims suggests that the "fasteners" are both the "hook" and the "loop" components. Further, the Examiner believes in claim 49 that subsections b) and c) are internally inconsistent. Applicants have canceled claims 35 and 51 herein; and Applicants have amended claims 42 and 49 to more particularly claim the subject matter of the present invention. Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. §112, second paragraph.

#### **8. Rejection of Claims 32-38 and 49-51 As Anticipated**

**(Paragraph 11 of the Office Action Mailed on April 4, 2003)**

In the Office Action mailed April 4, 2003, the Examiner rejects claims 32-38 and 49-51 as being unpatentable under 35 U.S.C. §102(b) over U.K. Patent Application 2 308 290 issued to Fernfors and assigned to SCA Mölnlycke AB (hereinafter "the SCA publication"). The Examiner believes that the "strips" disclosed in the SCA publication and represented by reference numerals "8" and "13" correspond to the "elastic front panel" and "elastic back panel" (respectively) claimed by the present invention. The Examiner believes that the "weld" disclosed in the SCA publication and represented by reference numeral "17" corresponds to the "side seam" claimed by the present invention. The

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Examiner also believes that the SCA publication discloses that the strips "8" and "13" may be elastic (page 11 of the SCA publication).

In order to expedite allowance of the present application, Applicants have canceled claims 32-38 and 50-51 herein. Applicants have also amended claim 49 to include the subject matter of claim 52 (claim 52 has also been canceled). Applicants respectively submit that the amendments made herein obviate the rejection and Applicants respectfully request that the Examiner pass the remaining claims (40-49) to allowance.

#### **9. Rejection of Claims 39-48 and 52 As Obvious**

(Paragraphs 12 & 13 of the Office Action Mailed on April 4, 2003)

In the Office Action mailed April 4, 2003, the Examiner rejects claims 40-48 and 52 as being unpatentable under 35 U.S.C. §103(a) over the SCA publication in view of U.S. Patent No. 6,036,805 issued to McNichols (hereinafter "the McNichols patent"). The Examiner also rejects claim 39 as being unpatentable under 35 U.S.C. §103(a) over the SCA publication in view of the McNichols patent and U.S. Patent No. 5,624,428 issued to Sauer.

As described on page 10 of the Preliminary Amendment submitted by Applicants on December 18, 2002, the McNichols patent is not available as prior art to form the basis of a §103 rejection of the claims of the present invention. In paragraph 18 of the Office Action mailed April 4, 2003, the Examiner comments that "while McNichols may have been commonly assigned at the time the invention was made, Applicants have not provided the statement evidencing common ownership as set forth in MPEP 706.02(I)(2) nor is there evidence otherwise provided." The below-signed attorney of record hereby makes a statement evidencing common ownership in accordance with MPEP §706.02(I)(2) regarding the McNichols patent and the present application:

#### **STATEMENT OF COMMON OWNERSHIP**

Application Serial No. 09/216,545 and U.S. Patent No. 6,036,805 were, at the time the invention of Application Serial No. 09/216,545 was made, owned by Kimberly-Clark Worldwide, Inc.

MPEP §706.02(I)(2) states "This statement alone is sufficient evidence to disqualify Patent A from being used in a rejection under 35 U.S.C. 103(a) against the claims of Application X." Applicants

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respectfully request that the Examiner withdraw the rejections under §103(a) based on the McNichols patent.

**10. Rejection of Claims 32, 34-35, 37, 40, 42, 44 and 47-52 and 52 Under Obviousness-Type Double Patenting (Paragraphs 14-17 of the Office Action Mailed on April 4, 2003)**

In the Office Action mailed April 4, 2003, the Examiner rejects claims 32, 34-35, 37, 40, 42, 44, and 47-52 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21 and 23-27 of U.S. Patent No. 6,113,717 in view of the SCA publication (paragraph 15 of the Office Action mailed April 4, 2003). The Examiner also rejects claims 32, 34, 37, 40, 47, 49-50 and 52 as directed to an invention not patentably distinct from claims 14-16 and 21-22 of commonly assigned application serial number 09/706,294 (paragraph 17 of the Office Action mailed April 4, 2003).

Applicants submit herewith a terminal disclaimer for the term of any patent that may issue based on the present application to not extend beyond the term of U.S. Patent No. 6,113,717. Applicants have previously submitted a terminal disclaimer with respect to the present application and application serial number 09/706,294 (see Preliminary Amendment submitted on December 18, 2002). The below-signed attorney of record hereby makes a statement evidencing common ownership of both U.S. Patent No. 6,113,717 and application serial number 09/706,294 and the present application in accordance with MPEP §706.02(I)(2):

**STATEMENT OF COMMON OWNERSHIP**

Application Serial No. 09/216,545 and U.S. Patent No. 6,113,717 were, at the time the invention of Application Serial No. 09/216,545 was made, owned by Kimberly-Clark Worldwide, Inc. Additionally, Application Serial No. 09/706,294 and Application Serial No. 09/216,545 were, at the time the invention of Application Serial No. 09/706,294 was made, owned by Kimberly-Clark Worldwide, Inc.

MPEP §706.02(I)(2) states "This statement alone is sufficient evidence to disqualify Patent A from being used in a rejection under 35 U.S.C. 103(a) against the claims of Application X." Applicants respectfully request that the Examiner withdraw the rejections under the judicially created doctrine of obviousness-type double patenting based on U.S. Patent No. 6,113,717 and Application Serial No. 09/706,294.

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In conclusion, and in view of the remarks set forth above, Applicants respectfully submit that the application and the claims are in condition for allowance and respectfully request favorable consideration and the timely allowance of pending claims 40-49. If any additional information is required, the Examiner is invited to contact the undersigned at (920) 721-2433.

The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account. A duplicate of this sheet is provided.

Respectfully submitted,

THOMAS H. ROESSLER ET AL.

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## CERTIFICATE OF FACSIMILE TRANSMISSION

I, Cynthia M. Trudell, hereby certify that on July 8, 2003, this document is being transmitted via facsimile to: Commissioner for Patents, Right Fax No. 703-872-9302.

By: Cynthia M. Trudell  
Cynthia M. Trudell